RESERVED JUDGMENT

IN THE HOGH COURT OF UTTARANCHAL AT NAINIATL.

Writ Petition No. 1150 (S/S) of 2003

Deveki Nandan Joshi …… Petitioner

Versus

State of Uttaranchal & others …… Respondents

Mr. Manoj Tiwari, learned counsel for the petitioner.
Mr. B.D. Kandpal, learned Standing Counsel for the State.

Hon'ble P.C. Pant, J.

This writ petition has been moved under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to consider promotion of the petitioner as Co-operative Inspector, Group – I with effect from the date one Sri Hari Bilas Upreti, a person allegedly junior to him was promoted and also for the consequential promotion and benefits.

2. Brief facts of the case are that the petitioner was initially appointed through direct recruitment to the post of Government Supervisor in the year 1966 along with one Hari Bilas Upreti and 27 others. The name of the petitioner was at serial No. 7 while that of Mr. Upreti at serial No. 10. The petitioner was confirmed on the said post with effect from 01.01.1980. Thereafter, he got regular promotion to the post of Co-operative Inspector, Group-II / Assistant Development Officer (Co-operatives) vide order dated 03.05.1985 issued by the Additional Registrar(Administration) on behalf of respondent No. 4 and joined his duties in said post on 21.05.1985. Subsequently, the petitioner was promoted on ad hoc bases as Co-operative Inspector, Group- I by means of order passed by respondent No. 2 on 24.12.2001. In said promotion list also petitioner's name

stood at serial No. 3 while that of Hari Bilas Upreti was at serial No. 5.

3. Shri Hari Bilas Upreti before getting regular promotion to the post of Co-operative Inspector, Group- II in 1985, got earlier ad hoc promotion to said post on 23.05.1978 but reverted to his substantive post of Government Supervisor in the same year on 19.12.1978. He filed writ petitioners before Allahabad High Court (W.P. No. 2963 of 1998) which was disposed of on 14.02.1998 directing the competent authority to dispose of his representation. On the basis of which the Additional Registrar (Administration), Co-operative Societies, Uttar Pradesh vide his order dated 08.03.2000 gave notional promotion to Shri Hari Bilas Upreti to the post of Co-operative Inspector, Group- II with effect from 19.12.1978. Again, Shri Upreti filed another writ petition No. 204 of 2000 before this Court and got promoted as Co-operative Inspector, Group- I with effect from 24.07.1992 and thereafter as Assistant Registrar, Co-operative Societies with effect from 02.11.1999. The copy of the said judgment and order dated 16.01.2002 passed in said writ petition No. 204 of 2000 is Annexure -5 to this writ petition. pursuant to said judgment, Shri Upreti was given promotional benefits of the post of Co-operative Inspector, Group- I with effect from 16.01.1999 and all consequential benefits thereafter. Copies of said orders dated 21.03.2002 and 24.05.2002 are Annexure- 6 to this writ petition. Aggrieved by said orders, petitioner who was senior to Shri Upreti, hence, filed this writ petition after making representations to the authorities concerned.

4. In the counter affidavit filed on behalf of respondent Nos. 1 to 3, it is admitted that Shri Hari Bilas Upreti was promoted since 1978. it is further admitted that in pursuance of the judicial order passed on 16.01.2002 by this Court in writ petition No. 204 of 2000, Shri Upreti was given further regular promotion to the post of Co-operative Inspector, Group- I with effect from

16.01.1987 to the post of Co-operative Inspector, Group- I. It is nowhere denied in the counter affidavit that in the seniority list Shri Hari Bilas Upreti was junior to the petitioner. The only plea taken in the counter affidavit is this that the petitioner did not objected earlier to the promotions of Shri Upreti who was junior to him.

5. The respondents have nowhere disposed the seniority list filed with the writ petition in which the petitioner has been shown senior to Hari Bilas Upreti. It is also not a disputed fact that the respondents have given promotional benefits to Shri Upreti in compliance the Court's directions. However, while complying the Court's directions the respondents should have taken into consideration the cases of those who were senior in the cadre. Learned Standing Counsel for the State argued that the petitioner should have raised objections earlier so that his case too could have been considered. I see no force in the contention made by learned State Counsel for the reason that in writ petition No. 204 (S/S) of 2000, the order was passed only on 16.01.2002. Not only this, copy of seniority list issued by the Registrar, Co-operative Societies on 24.12.2001 (copy as Annexure- 2 to the writ petition) shows that till 2001, admittedly, petitioner's name (Devki Nandan Joshi) finds place at serial No. 3 as against Hari Bilas Upreti which was at serial No. 5. As such in the year 1985 to 1989 or in 1992, the petitioner had no occasion to make objections or representations in this regard. The order passed by the Addl. Registrar(Administration), Co-operative Societies U.P. forming part of the judgment dated 16.01.2002 (copy as Annexure C.A.- 1 to this writ petition) also shows that the notional promotion was given to Shri Upreti from 19.12.1978 to the post of Co-operative Inspector, Group- II.

6. Mr. B.D. Kandpal, learned State Counsel further argued that the petitioner has not impleaded Shri Upreti in this writ petition who was a necessary party. I am unable to agree with

the submission for the reason no mandamus has been sought against Shri Upreti. Moreover, learned counsel for the parties conceded that Shri Upreti has already retired from service. What the petitioner has sought is the same benefits which has been given to a person junior to him which cannot be said to be unjustified.

7. It may be pertinent to mentioned here that under Rule 5 of the U.P. Government Servants Seniority Rules, 1991 (applicable in Uttaranchal) provides that where according to the service rules appointments are to be made by direct recruitment the seniority inter se of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list. Rule 6 of the same Rules further provides that where appointments are to be made only by promotion from a single feeding cadre, the seniority inter se of persons so appointed shall be the same as it was in the feeding cadre.

8. For the reasons as discussed above, the petitioner cannot be deprived of his promotional and consequential benefits as prayed by him, for a person junior to him has been given the same. Accordingly, the writ petition is allowed. The respondents are directed to consider the promotion of the petitioner to the post of Co-operative Inspector, Group- I with effect from the date it was given to Shri Hari Bilas Upreti (person junior to the petitioner) and also to consider further consequential promotion and benefits. No order as to costs.

(P.C. Pant, J.)

Dt. 26 July 2004.
H.Negi